

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 652 OF 1997

The Industrial Credit & Investment
Corporation of India Ltd., Mumbai. ... Petitioner

V/s

1. Zadona Electronics Ltd. & ors. ... Respondents

Mr. Simral Purohit with Ms. Pooja Sood i/by M/s.
Manilal Kher Ambalal & Co. for the petitioner.

Ms. Jane Cox for respondent Nos. 8 & 9.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 30TH NOVEMBER, 2006.

ORAL JUDGMENT:

1. The Industrial Credit & Investment Corporation India Ltd., (hereinafter referred to as "the ICICI Bank"), the petitioner in this case, has challenged an order dated 31.7.1995 passed by the Industrial Court, Thane. The Industrial Court was seized of a complaint filed under Items 9 and 10 of Schedule IV of the MRTU & PULP Act, 1971. This complaint was filed by the workers employed in Bush India Ltd. against the Company. During the pendency of the complaint, the Company's name was changed to M/s. Zadona Electronics Ltd. The ICICI Bank filed

Suit No. 1466 of 1994 against the Company as a debenture trustee for recovery of dues. It also filed Suit No.4131 of 1994 against the Company for recovery of its own dues. The Court Receiver was appointed in both the suits by way of certain interim orders passed in the suits. As a result, the Court Receiver took possession of the properties of the Company. Orders have been passed in the aforesaid suits as also in suits filed by other secured creditors directing the Receiver to sell the properties and to disburse the amounts to the secured creditors and the tax authorities. When the workmen came to know of this fact, they moved a writ petition before this Court being Writ Petition No. 4363 of 1994 for permission to implead the Court Receiver as a party to their complaint. This Court, while admitting the writ petition, granted ad-interim relief to the workmen allowing them to implead the Court Receiver as a party to the pending Complaint (ULP) No. 661 of 1993. This order of the High Court was passed on 26.10.1994. Accordingly, the Industrial Court permitted the workers to implead the Court Receiver as a party to their complaint. After impleading the Court Receiver, the writ petition was withdrawn on 9.2.1995 by the workers. The Industrial Court by its order dated 31.7.1995 held that the respondents, including the Court Receiver, were guilty of unfair labour practices under Items 9 and 10 of Schedule

IV of the MRTU & PULP Act. They were directed to cease and desist from committing the unfair labour practices complained of and to provide work to all the complainants including those who were on the muster roll on 1.4.1993. The respondents were further directed to pay the concerned workmen arrears of wages from June, 1993 onwards and to continue to pay monthly wages regularly thereafter. The petitioners who were not parties to the complaint have filed the present writ petition.

2. The learned counsel appearing for the petitioner contends that the order appointing the Court Receiver passed by this Court in the writ petition is incorrect as only the Court, which passes an order appointing the Court Receiver, can grant leave to a party to implead the Court Receiver in any proceedings. A writ petition was not the proper remedy, according to the learned counsel. It is then submitted that the order for appointment of the Court Receiver was passed at an ad-interim stage. The writ petition was withdrawn thereafter and, therefore, the order for appointment of the Court Receiver lapses. It is also submitted that the Court Receiver cannot, by any stretch of imagination, be considered an employer under the provisions of the MRTU & PULP Act and, therefore, the Industrial Court was in error in declaring that the Court Receiver had committed

an unfair labour practice. The learned counsel then submits that the workers' interests are adequately protected by this Court when it passed the order dated 22.4.1996 on a notice of motion taken out in Suit No. 1466 of 1994. He submits that although the winding up petition has been filed by the workers before this Court against the Company, there is no order directing that the Company be wound up. He submits that the workers' claim can be considered *pari passu* under Section 529-A of the Companies Act only after the order of winding up has been passed by the High court. Reliance is placed on the judgment of the Karnataka High Court in the case of **BPL Ltd. v/s Inter Modal Transport Technology Systems (Karnataka) Ltd. & ors., reported in (2001) 43 CLA 228 (Kar.)**.

3. The learned counsel appearing for the respondent workmen submits that the impugned order was passed only after the Court Receiver was made a party with leave of this Court. Therefore, the order is binding on the Court Receiver. Today, according to the learned counsel, the Company is not functioning and its assets are being sold. The workers have a claim over these assets as their arrears of wages from June, 1993 onwards have not been paid. She submits that, in fact, the workers are being heard in a recovery proceeding which has been filed

pursuant to the orders passed by the Debt Recovery Tribunal in O.A. No. 3379 of 2000. The learned counsel also submits that when the order was passed granting leave to the workmen to join the Court Receiver as a party respondent to their complaint before the Industrial Court, the order of this Court was not challenged either by the Court Receiver or by the petitioner herein. She submits that the petitioner, therefore, cannot make any grievance about that order today. She points out that the writ petition was withdrawn once the Industrial Court had granted permission to join the Court Receiver as a party to the proceeding. The writ petition had worked itself out and then there was no need to keep the same pending. It is under these circumstances that it came to be withdrawn on 9.2.1995. The learned counsel contends that the workers' interest must be protected as they have a *pari passu* charge over the properties of the Company. If the petitioner is allowed to sell and distribute the sale proceeds without the workers being heard, great injustice would be caused to the workers.

4. The definition of the term "employer" contained in the Industrial Disputes Act, 1947 and the Bombay Industrial Relations Act, 1946 have been incorporated into the MRTU & PULP Act. Admittedly, the Company fall within the purview of the Industrial Disputes Act, 1947

and, therefore, the definition of "employer" as contained in Section 2(g) of the Industrial Disputes Act would apply to the facts and circumstances in this case. An employer would be one who controls the working of any establishment. The Court Receiver appointed in the present case was *custodia legis* of the properties and has nothing to do with the day-to-day functioning of the Company. There was no employer-employee relationship between the Court Receiver and the workmen of the Company as he did not participate in the running of the business of the Company. In such circumstances, I am of the view that the Industrial Court was in error in declaring that the Court Receiver had been indulging in unfair labour practices. Further, the complaint was filed in 1993 alleging that the Company has committed unfair labour practices under Items 9 and 10 of Schedule IV of the MRTU & PULP Act prior to the filing of the complaint. The Court Receiver was not in the picture at that point of time. The Court Receiver was appointed by this Court vide order dated 12.4.1994 much after the complaint was filed. In such circumstances, it is obvious that the Court Receiver cannot be held responsible for the acts of the Company prior to his appointment. Besides, the unfair labour practices that the company indulged are that, it had declared an illegal closure which amounted to an unfair labour practice under Item 9 of Schedule IV

of the MRTU & PULP Act. The Court Receiver had not been appointed when the closure was declared and, therefore, in these circumstances, he cannot be held liable for committing an unfair labour practice. To that extent, the order of the Industrial Court must be set aside. However, the Court Receiver would be liable for payment of the arrears of wages from June, 1993 onwards and for monthly wages thereafter from the sale proceeds of the property of the Company.

5. The submission of the learned counsel for the petitioner that the order appointing the Court Receiver passed by this Court at the ad-interim stage had lapsed after the writ petition was withdrawn cannot be accepted. The petition was withdrawn only after the Court Receiver was impleaded and brought on record in the complaint before the Industrial Court. Therefore, the question of the ad-interim order of the High Court having lapsed does not arise.

6. The judgments relied on by the learned counsel relate to the workers' right to prefer an application under Section 529A of the Company's Act and the relief that they are entitled to. I am not at this stage required to consider whether an application under Section 529-A can be filed by the workmen prior to the order for

appointment of the Court Receiver has been passed in the winding up petition and, therefore, the judgments which are relied upon by the parties are not relevant for deciding the present writ petition.

7. Admittedly, the workmen are being heard by the Recovery officer under the Recovery of Debts due to Banks and Financial Institutions Act, 1993. Besides this, there is an order of this Court in Chamber Summons No. 385 of 1996 in Suit No. 1466 of 1994 passed on 12.2.1997 directing the Receiver to give notice to the applicant union which represents the respondent workmen in this case before moving the Court for distribution of the sale proceeds. In this view of the matter, no further directions in that regard are necessary.

8. It is, therefore, clear that in the facts and circumstances of this case, the Court Receiver cannot be held guilty of having indulged in unfair labour practices which the workmen have complained of in Complaint (ULP) No. 661 of 1993. However, the Court Receiver and the Company are bound by the directions of the Industrial Court that arrears of wages and wages from June, 1993 onwards are to be paid to the workmen.

9. Writ petition disposed off accordingly.

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